

### REMARKS

Claims 32; 33; 34; 35; 36; 38; 39; and 44 have been amended. Withdrawn claim 37 has also been amended in harmony with the amendment with the other claims (claim 37 has been withdrawn as being directed to a non-elected subspecies, subject to reinstatement if a generic claim is held allowable). New method claim 48 has been added. Claims 1 to 31 and 40 to 43 have been previously canceled.

Claims 32 to 36; 38; 39; 44; and 48 remain in the application. Among these, claim 32 is the sole independent device claim, and claims 44 and 48 are method claims.

Reexamination and reconsideration are respectfully requested in view of the amendments and the following remarks.

As amended, claim 32 defines a motor-driven tool for applying an implantation force to a fastener sized and configured for implantation in tissue in response to an implantation force applied according to prescribed conditions. As defined in amended claim 32, the motor-driven tool comprises a tool body, a drive motor carried in the tool body, and a driven member coupled to the drive motor. The driven member is carried by the tool body and is operable to apply the implantation force during operation of the drive motor. As further defined in amended claim 32, a carrier on the driven member couples the fastener to the driven member to transfer the implantation force from the driven member to the fastener. As further defined in amended claim 32 a motor control unit is carried in the tool body and is coupled to the drive motor. The motor control unit is conditioned to operate the drive motor in phases. The phases include an initial phase, a lull phase, and a final phase. In the initial phase, the motor control unit operates the carrier to transfer the implantation force to the fastener under conditions that are short of the prescribed conditions so that the fastener remains coupled to the carrier. The lull phase commences automatically at the end of the initial phase to interrupt operation of the carrier. In the final phase, the motor control unit operates the carrier under conditions that supplement the conditions of the initial phase to achieve the prescribed conditions to release the fastener from the carrier and implant the fastener in tissue. As further defined in claim 32, the motor control unit requires, after automatically entering the lull phase, a prescribed final phase command to advance from the lull phase to the final phase.

Method claim 44, which includes providing a motor-driven tool as defined in claim 32, operates the motor control unit in the initial phase to partially implant the fastener in a tissue region

and decides during the lull phase to commence the final phase. The method includes entering the prescribed final phase command to advance the motor control unit from the lull phase to the final phase, thereby completing the implantation of the fastener in the tissue region.

As further defined in amended dependent claim 35, the driven member is also operable to apply a removal force to withdraw the fastener from tissue. As defined in amended claim 35, the motor control unit includes a removal phase operating the carrier to transfer the removal force to the fastener. As further defined in claim 35, the motor control unit requires after automatically entering the lull phase, a prescribed removal phase command different than the prescribed final phase command to advance from the lull phase to the removal phase.

New method claim 48 includes providing a motor-driven tool substantially as defined in claim 35. The method includes coupling a fastener to the carrier, accessing a tissue region, and operating the motor control unit in the initial phase to partially implant the fastener in the tissue region. As further defined in claim 48, the method includes deciding during the lull phase to commence either the final phase or the removal phase. As further defined in claim 48, if deciding to commence the final phase, the method includes enters a first prescribed command to advance the motor control unit from the lull phase to the final phase, thereby completing the implantation of the fastener in the tissue region. As also defined in claim 48, if deciding to commence the removal phase, the method includes enters a second prescribed command (different than the first prescribed command) to advance the motor control unit from the lull phase to the removal phase, thereby withdrawing the fastener from the tissue region.

Support for the subject matter of the amended claims can be found, e.g., on Specification pages 16 to 18 and 27 to 31.

The claims as filed stand rejected under 35 U.S.C 102(b) based upon Scott et al. (US 5,334,196). This rejection is respectfully traversed.

Scott does not teach or suggest a motor-driven tool that includes a motor control unit that operates the tool in three distinct phases -- an initial phase, a lull phase, and a final phase, as defined in device claim 32 and method claim 44. Scott does not teach or suggest a motor-driven tool that implants a fastener in two phases, which are separated by an automatic lull phase, which requires a decision to be made before completing the implantation of the fastener. Scott's tool is manually

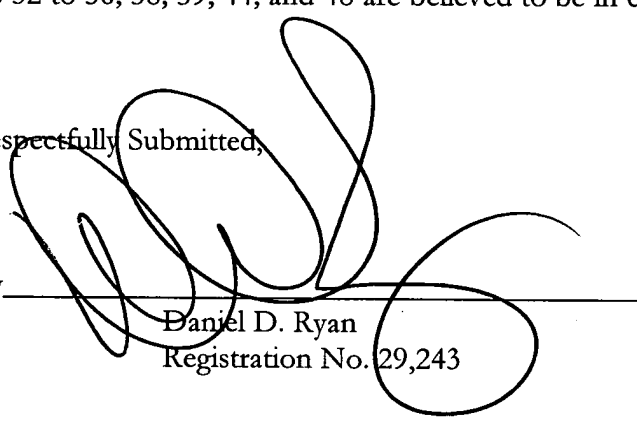
actuated and it serves a single purpose; namely, to withdraw a fastener that has previously been implanted by another tool in some fashion that is not described.

Furthermore, Scott does not teach or suggest a motor-driven tool that includes a motor control unit that operates the tool in four distinct phases -- an initial phase, a lull phase, a final phase, and a removal phase, as defined in dependent device claim 35 and new method claim 48. Scott does not teach or suggest a motor-driven tool that implants a fastener in two phases, which are separated by an automatic lull phase, which requires a decision to be made between either completing the implantation of the fastener or withdrawing the fastener. As before stated, Scott's tool is manually actuated and it serves a single purpose; namely, to withdraw a fastener that has previously been implanted by another tool in some fashion that is not described.

For the foregoing reasons, claims 32 to 36; 38; 39; 44; and 48 are believed to be in condition for allowance.

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